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C O N F I D E N T I A L SECTION 01 OF 02 NAIROBI 000067

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TAGS: [PREF](#) [PGOV](#) [PREL](#) [PHUM](#) [EIAD](#) [PTER](#) [KE](#) [SO](#)
SUBJECT: SOMALIA: KENYAN PUSHBACK OF ASYLUM SEEKERS

REF: STATE 527

Classified By: REFUGEE COORDINATOR BILL LEHMBERG FOR REASON 1.4 (D)

11. (C) The Ambassador raised reftel points with Foreign Minister Tuju the morning of January 4. The Ambassador emphasized the need for Kenya to cease the involuntary return of refugees (400 from Liboi and another 291 from Lamu) and meet its international humanitarian obligations to open its border to legitimate asylum seekers.

12. (C) In response, Tuju indicated that the refugee situation should be viewed in the context of the routing of the Islamic Courts forces and the current relative peace in Somalia. He added that Kenya would process asylum seekers with the TFG on the Somali side of the border. (Note: This may be a reference to Tuju's position, expressed at a January 3 press conference, that UNHCR can assist/protect would-be refugees on the Somali side of the border. End note.) The Ambassador told Tuju that screening refugees on the Somali side of the border in collaboration with the TFG authorities is an unacceptable means of protecting asylum seekers since TFG officials cannot reasonably be expected to serve as neutral adjudicators of asylum requests. Tuju also implied that Kenya acted justly in returning the 400 asylum seekers from Liboi because a senior financier of the Courts was among the mix of individuals.

13. (C) Note: Our speculation is that that Tuju's reference to a "senior financier of the Courts" refers to Ahmed Nur (Jimale). Jimale, a member of the Hawiye/Duduble sub-clan, controlled the finances of Mogadishu's seaport and international airport on the Council of Islamic Courts' behalf along with Omar Abukar ((Adani)). It is also likely that Jimale raised funds for the CIC. Jimale is the former owner of the al-Barakat Money Exchange hawala, and was personally allocated 4-5 seats in the CICs Shura, or Legislative Council. On 7 November 2001, the U.S. froze al-Barakat's assets and Jimale's personal assets in the U.S. after they were included on Terrorism Financing Executive Order Four. End note. Comment: Detaining Jimale could have led to further information regarding the locations of CIC leaders (and possibly HVTs), and may have provided insights into the group's future plans. Furthermore, it is likely that a group which included Jimale would have also been comprised of other individuals of interest. End comment.

14. (C) The Ambassador concluded the conversation by noting that the USG wanted to discuss the subject with Kenyan

authorities in greater detail on an urgent basis. Subsequent to the Ambassador's conversation with Tuju, the Embassy prepared the following diplomatic note to the Ministry of Foreign Affairs, which we plan to deliver on January 5 unless otherwise instructed by the Department.

Begin text:

We appreciate the Government of Kenya's continued role in seeking to stabilize Somalia. We further appreciate that the Government of Kenya has a responsibility to ensure border security and to interdict known terrorists.

The Government of Kenya also has humanitarian responsibilities based on international conventions that it has signed and pledged to maintain. The OAU Convention on Refugees, to which Kenya is a signatory, explicitly calls for allowing civilians at risk to seek asylum on its territory. The Geneva Convention calls for non-refoulement of refugees. The Universal Declaration of Human rights recognizes the right to seek and enjoy asylum. Officials at U.S. Embassy Nairobi and the United Nations High Commission for Refugees have discussed this issue with Kenyan authorities over the past few weeks and received repeated assurances Kenya would honor its international obligations to admit asylum seekers.

We are deeply concerned about reports that Kenya has returned over 400 Somali asylum seekers at the Liboi transit center, close to 300 more at Lamu, and an undetermined number by sea. Forcibly returning these persons to a place where their lives could be endangered is a transgression of the principle of non-refoulement as defined under the 1951 Convention Relating

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to the Status of Refugees.

We understand the Office of the United Nations High Commissioner for Refugees has extended its offer to provide immediate expertise and support and entry points for newly arriving persons from Somalia. The United States Government also stands ready to assist Kenya with these obligations. We believe appropriate balance between security and protection can be found by screening all Somalis crossing into Kenya. This will ensure that Kenya offers appropriate protection to legitimate asylum seekers while increasing its chances of catching suspected criminals and militants who can be dealt with appropriately under international criminal law.

End text.

15. (C) Comment: During the Somali influx earlier this year the GOK worked with UNHCR to agree upon and put in place adequate screening, including GOK fingerprinting and UNHCR/GOK registration. The GOK appears now to have changed its tune in a manner that reflects the attitude we have previously heard voiced by Security Minister Michuki, suggesting anxiety at senior levels of the GOK over security threats to Kenya posed by the potential "spillover" from the Somalia conflict. We will continue to emphasize that security and humanitarian concerns are not mutually exclusive, and that through a cooperative approach with the international community (USG, UNHCR, ICRC) Kenya can meet its obligations to admit and retain asylum seekers without raising the possibility of violent extremists entering the country. End comment.

APPLETON